

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4387 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MAHARAJA SAYAJIRAO UNIVERSITY

Versus

ARVINDBHAI PARSOTTAMBHAI SHAH

Appearance:

MR SN SHELAT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 21/07/2000

ORAL JUDGEMENT

In this petition under Article 227 of the Constitution, the Maharaja Sayajirao University of Baroda has challenged the judgment and award dated 14.6.1988 passed by the Labour Court, Baroda in recovery application No. 259/80.

2. The short question arising for consideration in this petition is whether the Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as

"the Act") is applicable to the petitioner-University. The petitioner-University had suspended the respondent from service during pendency of a departmental inquiry on the ground that the respondent had demanded illegal gratification of Rs.5,000/- from a student for getting him admitted to the First Year in diploma course. During pendency of the inquiry, the respondent was paid 25% of the salary in accordance with the rules of the University. The respondent, therefore, challenged the said order in so far as the respondent was not paid subsistence allowance in accordance with the Industrial Employment (Standing Orders) Act, 1946.

3. The University contended before the Labour Court that the University is not an industry or an industrial establishment as defined by the Act and, therefore, only the rules of the University are applicable and not the Industrial Employment (Standing Orders) Act. However, the Labour Court held that in view of the decision of the Apex Court in Bangalore Water Supply case, industry as defined therein would include the petitioner-University and, therefore, the Act was applicable to the University.

4. The learned counsel for the petitioner-University has challenged the aforesaid decision on the ground that the general definition of 'industry' is not to be looked at for the purpose of considering whether the Act is applicable or not because the Act specifically defines what the industrial establishment means. Section 2(e) of the Act reads as under :-

"2(e) 'industrial establishment' means -

- (i) an industrial establishment as defined in clause (ii) of section 2 of the Payment of Wages Act, 1936, or
- (ii) a factory as defined in clause (m) of section 2 of the Factories Act, 1948, or
- (iii) a railway as defined in clause (4) of section 2 of the Indian Railways Act, 1890, or
- (iv) the establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen."

Obviously sub-clauses (ii), (iii) and (iv) are

not applicable. Therefore, the only question is whether the University can be said to be an industrial establishment as defined in Section 2(ii) of the Payment of Wages Act, 1936. Section 2(ii) of the Payment of Wages Act defines an industrial establishment as under:-

"2.(ii) `industrial or other establishment means
any -

- (a) tramway service, or motor transport
service engaged in carrying passengers or
goods or both by road, for hire or
reward;
- (aa) air transport service other than such
service belonging to, or exclusively
employed in the military, naval or air
forces of the Union or the Civil Aviation
Department of the Government of India;
- (b) dock, wharf or jetty;
- (c) inland vessel, mechanically propelled;
- (d) mine, quarry or oilfield;
- (e) plantation;
- (f) workshop or other establishment in which
articles are produced, adapted or
manufactures, with a view to their use,
transport or sale;
- (g) establishment in which any work relating
to the construction, development or
maintenance of buildings, roads, bridges
or canals, or relating to operations
connected with navigation, irrigation or
the supply of water, or relating to the
generation, transmission and distribution
of electricity or any other form of power
is being carried on;
- (h) any other establishment or class of
establishments which the Central
Government or a State Government may,
having regard to the nature thereof, the
need for protection of persons employed
therein and other relevant circumstances,
specify, by notification in the Official

Gazette."

It is obvious that the University is not included in definition of 'industrial establishment' under Section 2(ii) of the Payment of Wages Act.

5. In view of the above discussion, it has to be held that the provisions of the Industrial Employment (Standing Orders) Act, 1946 are not applicable to the petitioner University and, therefore, the Labour Court erred in applying the provisions of the said Act. The impugned judgment and award of the Labour Court in recovery application No. 259/90 is accordingly hereby set aside.

Rule is made absolute. There shall be no order as to costs.

July 21, 2000 (M.S. Shah, J.)
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